Supreme Court, U.S.
FILED
MAY 18 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-1459

THE SUN PUBLISHING COMPANY,
Petitioner,

versus

JAMES P. STEVENS,
Respondent.

BRIEF OF RESPONDENT

CLEVELAND STEVENS
615 Highway 378
Conway, South Carolina 29526
Attorney for Respondent,
James P. Stevens

STATEMENT OF THE CASE

Respondent, James P. Stevens, a public official, brought two complaints for libel against petitioner newspaper which were consolidated for trial. The complaints were predicated upon two articles by petitioner's reporter, John Monk, which were published June 11, 1974 and July 15 and 17, 1974 respectively. The June 11 article dealt with the alleged participation of respondent in development of property known as Sandy Island, of which he was a part owner. The July 15 and July 17 articles dealt partially with the development of Sandy Island, but the principal portion of these articles was devoted to the personal and legal relationship of respondent, his brother, Thomas McLeod, and his brother's ex-wife, Marlene McLeod.

At the close of the testimony, the trial judge ruled that the June 11 article was not libelous (R. 232, 233). The case then went to the jury on the question of libel in the July 15 and July 17 articles. The jury returned a Fifty Thousand Dollar ($50,000) verdict for actual damages, which verdict was sustained by the trial court and the Supreme Court of South Carolina.

The defamatory articles contained quotations from respondent's ex-sister-in-law to the effect that her ex-husband was "an incredible conman and business manipulator who had ruined many peoples' lives." She was further quoted as saying about McLeod, "I think he has a real mental problem--he has ruined so many peoples' lives. The only people who have benefited from him are the bartenders and barmaids...," and with reference to the publicity surrounding her ex-husband's departure from Florida, "It's like the gangster's a hero." Having vilified her ex-husband and painted him as a thoroughly disreputable and dishonest man, Mrs. McLeod was quoted as saying, "James will do pretty much as Tom tells him. Tom uses James." (R 12, 221)

While there is no dispute that the ex-sister-in-law was accurately quoted, the truth of her statement about the relationship of the brothers and whether respondent would do pretty much as his brother told and permit himself to be used by his brother was forcefully denied. (R. 64) Notwithstanding that, the reporter, Monk, admitted being forewarned as to the untruth of Mrs. McLeod's statements and her obvious bias,[1] her comments were printed word for word.

---

[1] On cross-examination the reporter testified (R. 170):

"Q. Now, John, you do admit that when you talked to Marlene McLeod you knew her to be a biased litigant, did you not?

A. I knew that when I talked to her.
Q. Yes.
A. That is correct.
Q. No question about that is there? She was in litigation all over everywhere?
A. Everyone in the article was biased to some extent.
Q. I understand that, sir. And you knew that she was biased and prejudiced, and didn't Davis Heniford tell you that in divorce cases people will tell you anything?
A. That's true.
Q. And you printed what she said word for word anyhow, didn't you?
A. That's correct, too."

The respondent also claims to have been libeled by petitioner's assertion that he (respondent) was being sued by Mrs. McLeod for "abuse of his political power." The McLeod complaint contained an allegation that respondent "had helped pressure an Horry County magistrate into issuing two unlawful warrants for Marlene McLeod." (R. 68) The abuse of political power statement was a conclusion by the reporter based on his review of the pleadings. He claimed to be unaware that the lawsuit referred to had been ended by Mrs. McLeod sometime prior to the article. (R. 68, 178)

ARGUMENT

I

The South Carolina Courts Did Apply The Constitutional Standard Of "Convincing Clarity" And Accord De Novo Review

Petitioner argues that the South Carolina Supreme Court "did not apply the Constitutional standard of convincing clarity nor accord *de novo* review." This contention ignores the Court's opinion, which states (A-7):

> "...under settled principles, we review the evidence and all reasonably inferences deducible therefrom in the light most favorable to the party opposing the motion for judgment N.O.V. *Graham v. Suggs, et al.*, Smith's 12/5/77, Opinion No. 20557; also see decisions collected in 3 S.C. Digest, Appeal & Error, Key No. 933 (°).
>
> Upon so viewing the evidence, we find the jury's verdict to be supported by the record. There is ample testimony which, if believed, would satisfy the actual malice requirement of *New York Times v. Sullivan*, 376 U.S. 254,84 S.Ct. 710, 11 L. Ed. 2d 686 (1964), which established the law of defamation on a broad principled First Amendment basis.
>
> However, appellant asserts a publisher of an allegedly defamatory statement is entitled under the First Amendment to a *de novo* review of the entire record on appeal. This contention is based on *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 91 S.Ct. 1811, 1825, 29 L.Ed.2d 296 (1971), where the Court stated 'First Amendment Questions of "constitutional fact" compel this Court's *de novo* review.' While at least one court [1] has agreed with appellant's interpretation that the above language imposes a *de novo* scope of review on *all* appellate courts, we find it unnecessary to rule on that question.
>
> Assuming, without deciding, appellant is entitled to a *de novo* review of the record by this Court, judgment would still be rendered for respondent. An individual's status as a public figure does not immunize a publisher from liability when it prints defamatory articles with malice. Adhering to the Court's two-pronged definition of malice in *New York Times, supra*, we believe appellant published the instant articles with reckless disregard of the falsity of their contents."

---

[1] See *Faddell v. Minneapolis Star & Tribune Company, Inc.*, 557 F.2d 107 (7th Cir. 1977).

This portion of the opinion clearly manifests the South Carolina Court's compliance with the requirements of the First Amendment as interpreted by the United States Supreme Court. Petitioner was accorded a *de novo* review, and the South Carolina Supreme Court, upon a full review of the record, determined to its satisfaction that the articles were false, libelous and published with malice. The court was well familiar with the "convincing clarity" standard, as references to same are found in the brief of both petitioner and respondent submitted to the State Supreme Court, as well as the record (R. 244). The record does not reflect the trial judge's charge to the jury as to the appropriate standard of proof, but it is significant to note that no exception was taken to the judge's charge.

II

The Libel Claims are Meritorious on De Novo Review

(1)

Publication Was Not in Good Faith or Substantially Accurate

Petitioner also argues publication was in good faith and substantially accurate. The circumstances surrounding the publication did not support this contention. John Monk never met Marlene McLeod and had spoken with her only once by telephone. He knew she was a litigant in several cases pending against the respondent, and knew that some of the litigation arose as a result of a divorce decree. Every reason exists to satisfy Monk that *she would not* be a responsible person from whom to obtain true and accurate facts. Monk was a stranger to both respondent and Marlene McLeod, had never confronted respondent personally with the story of Marlene McLeod, and knew there was every reason to disbelieve Marlene McLeod after having talked to Davis Heniford. (R.30)

While it is true that Monk did some investigatory work on portions of the article, the damaging portion of the ex-sister-in-law's comments

as they related to respondent were totally unsubstantiated. Monk admitted that he had not asked anyone (other than Marlene McLeod) whether respondent would do what his brother told him to (R. 70, 71).

Monk knew Marlene McLeod was biased, had been warned of her bias and the probable inaccuracy of her statements, yet he printed what she said word for word (R. 30, 170). His professions of good faith are, therefore, unconvincing.

(2)

Marlene McLeod's References To Respondent
Were Actionable In Law and Fact

Petitioner contends that the statements of the ex-sister-in-law were expressions of opinion, protected under the First Amendment. In support of this contention, petitioner cites *Letter Carriers v. Austin*, 418 U.S. 264, 41 L.Ed.2d 745, 94 S.Ct. 2770 (1974). Its reliance is misplaced, however, as indicated by footnote 15 (41 L.Ed.2d 745), which states, "In view of our conclusion that the publication here was protected under the Federal Labor Law, we have no occasion to consider the First Amendment arguments advanced by the appellant."

While petitioner characterizes various statements by Marlene McLeod as "statements of opinion", it is clear that such statements as "Tom uses James," and "James will do pretty much as Tom tells him," are statements of fact.

In *Hotchner v. Castillo-Puche*, 551 F.2d 910, 913 (2nd Cir. 1977) the Court said:

> "An assertion that cannot be proved false cannot be held libelous. A writer cannot be sued for simply expressing his opinion of another person, however unreasonable the opinion or vituperous the expressing of it may be. Thus, Castillo-Puche's characterizations of Hotchner cannot, if viewed in isolation, constitute actionable libel.
>
> Liability for libel may attach, however, where a negative characterization of a person is coupled with a clear but false implication that the author is privy to facts about the person that are unknown to the general reader. If an author represents that he has private, firsthand knowledge which substantiates the opinions he expresses, the expression of opinion becomes as damaging as an assertion of fact."

In any event, the statements made by Marlene McLeod were related as facts, and not opinion. Nowhere in the article are the statements of Marlene McLeod credited as her opinions.

Respondent's testimony cannot be interpreted as showing Marlene McLeod's statements about him to be true. Quite the opposite, his testimony shows her statements about him to be absolutely false. [2]

(3)

As To Description
Of the Charge Alleged In The Lawsuits

As to the petitioner's contention that the description of the charge alleged in the lawsuit as "an abuse of political power" was reasonably accurate, it is manifest that the respondent was never the subject of a lawsuit which charged him with "abuse of political power." An action was instituted which alleged that he had helped pressure a magistrate into issuing two unlawful warrants for Marlene McLeod's arrest; however, this lawsuit had been voluntarily dismissed on February 23, 1974.

While accurate reports of judicial proceedings and public records are, indeed, privileged, such protection is not afforded inaccurate and defamatory reports. As stated in *Time, Inc. v. Mary Alice Firestone*, 421 U.S. 909, 43 L. Ed. 2d 773, 95 S. Ct. 1551 (1975):

> "The public interest in accurate reports of judicial proceedings is substantially protected by *Cox Broadcasting Co., supra*. As to inaccurate and defamatory reports of facts, matters deserving no First Amendment protection, see 418 U.S., at 340, we think *Gertz* provides an adequate safeguard for the constitutionally protected interests of the press and affords it a tolerable margin for error by requiring some type of fault."

---

[2] "Q. "She said, adding that James will do pretty much as Tom tells him to." Now, Senator, I ask you whether or not that's true?

A. That's absolutely false. If anybody can influence him, I think it was me, instead of the other way.

Q. "Tom uses James."

A. Tom has never used me. I have tried to assist him if he had difficulties.

Q. "Mrs. McLeod said she thought a lot of the publicity surrounding her ex-husband's departure from Florida was slanted: It's like the gangster's a hero." Now, Senator—

A. To begin with, Mr. Long, I don't think he is any gangster, and certainly I would never do what a gangster told me, and never would I do what a con man told me—if I understand the definition of a con man, that's a swindler. Take people in their confidence for the purpose of swindling them. And I am certainly not going to do what either one says. I have my own conscious and my own life to live with."

In *Gertz v. Welch*, 418 U.S. 323, 41 L.Ed.2d 789, 94 S.Ct. 2997, the court declared:

> (t)here is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in "uninhibited, robust, and wideopen" debate on public issues. *New York Times Co. v. Sullivan*, 376 U.S., at 270, 11 L.Ed.2d 686, 95 ALR2d 1412. They belong to that category of utterances which "are no essential part of any exposition of ideas, and are of such slight social value as a step in truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572, 86 L.Ed. 1031, 62 S.Ct. 766 (1942).

It is unquestioned that newspaper reporters are not held to a standard of technical perfection in reporting the contents of the public record. This does not, however, absolve the press from the responsibility of printing the truth. The simple facts are that the lawsuit to which the reporter referred contained two causes of action: one for false imprisonment and the other for malicious prosecution. While the reporter was not obligated to use the correct legal terminology in referring to these causes of action, he had a concurrent obligation not to permit his imagination to run rampant in describing them, resulting in a characterization which is plainly and simply inaccurate. As stated in *Piracci v. Hearst Corporation*, 263 F. Supp. 511 (D.Md.[1966], affirmed 371 F.2d 1016 [4th Cir. 1967]), "The law requires nothing more than substantial accuracy in the significant portions of the article."

Monk's assertion that the lawsuit "charged Senator Stevens, one of the most powerful state legislators, with an abuse of his political power" was stated as a fact, not opinion or comment. The characterization was not factually correct, even though the pleadings were in the reporter's possession, and were the product solely of his fertile imagination.

(4)

As to Source's "Obvious Bias"

Petitioner also questions the bias of Marlene McLeod, and whether the South Carolina Supreme Court correctly applied *St. Amant v. Thompson*, 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968).

It is clear from the entire record that Marlene McLeod was biased against respondent. Monk knew she had sued respondent, and admitted knowing her bias (R. 179). The fact that she was biased was not the basis for the Court's finding of malice, however. The South Carolina Supreme Court's opinion dealt at length with its reasons for determining the presence of malice (A-34,35).

CONCLUSION

It is respectfully submitted that the questions presented for review have previously been determined by the South Carolina Supreme Court in accordance with the principles applicable under the First Amendment, as the same have been interpreted by the United States Supreme Court. This being the case, no useful purpose would be served by additional *de novo* review of the issues.

For these reasons, respondent respectfully prays that the petition for a Writ of Certiorari be denied.

CLEVELAND STEVENS
Attorney for Respondent
615 Highway 378
Conway, South Carolina 29526

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 77-1459

THE SUN PUBLISHING COMPANY, Petitioner,

vs.

JAMES P. STEVENS, Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May, 1978, three copies of the Brief of Respondent were mailed by certified mail, postage prepaid, to William L. Pope, Esquire, Attorney at Law, counsel for Petitioner, addressed as follows: Post Office Box 944, Columbia, South Carolina 29202. I further certify that all parties required to be served have been served.

CLEVELAND STEVENS
615 Highway 378
Conway, South Carolina 29526
Counsel for Respondent